

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	EDCV 09-1864 PSG (SSx)	Date	December 5, 2017
Title	City of Colton et al. v. American Promotional Events, Inc. et al.		

Present: The Honorable	Philip S. Gutierrez, United States District Judge		
Wendy Hernandez		Not Reported	
Deputy Clerk		Court Reporter	
Attorneys Present for Plaintiff(s):		Attorneys Present for Defendant(s):	
Not Present		Not Present	

**Proceedings (In Chambers): Order GRANTING motion for entry of the Estate of Wong Chung Ming Consent Decree**

Before the Court is a motion for entry of the Estate of Wong Chung Ming Consent Decree filed by the United States of America (“the United States”). *See* Dkt. # 2030 (“*Mot.*”). Plaintiffs City of Rialto and Rialto Utility Authority (together, “Rialto”) oppose the motion, *see* Dkt. # 2037 (“*Opp.*”), and the United States replied, *see* Dkt. # 2040 (“*Reply*”). Goodrich Corporation (“Goodrich”) joined the United States’ reply. *See* Dkt. # 2043 (“*Goodrich Reply*”). The Court held a hearing in this matter on December 4, 2017. Having considered the arguments made by the parties, the Court **GRANTS** the United States’ motion to enter the Estate of Wong Consent Decree.

I. Background

This motion is the latest in a long-running series of actions concerning the cleanup of a 160-acre site (“the Site”) in Rialto, California pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”).

In 2009, the Environmental Protection Agency (“EPA”) listed the Site on the National Priorities List, a list of the nation’s most contaminated sites, after conducting an investigation. *Mot.* 3:8–15. EPA issued a plan calling for a pump and treat remedy to contain the plume of contaminated groundwater emanating from the Site and to remove contaminant mass from the most highly contaminated source area. *Id.* 3:17–23. EPA has previously estimated that the total cost of a comprehensive cleanup of the Site could reach \$100 million. *Id.* 3:25–27.

In 2010, the United States filed a complaint on behalf of EPA against five parties, including Wong, seeking cost recovery, declaratory judgment, and injunctive relief; eventually other parties were added and other claims were consolidated in this Consolidated Federal Action. *Id.* 4:2–6. At a scheduling conference soon thereafter, this Court set its expectation that the

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action would settle under the leadership of the United States and ordered the parties to participate in mediation. *Id.* 4:8–12; *see also* Dkts. # 415, 1246. The Court also ordered that all communications made in conjunction with settlement would be confidential and not subject to discovery. *Mot.* 4:12–17; *see also* Dkts. # 427, 608. A number of consent decrees setting forth the remediation process followed. *Mot.* 6:11–9:25.

On July 18, 2017, the United States lodged the Estate of Wong Consent Decree (“Wong CD”) with the Court.<sup>1</sup> *See* Dkt. # 2021. It requires a \$5.9 million payment to reimburse or fund Site remediation costs, including EPA technical oversight, and provides access to the portion of the Site owned by Wong to ensure the long-term integrity of the remedy. *Mot.* 1:6–10. As required by the previously entered OU2/OU3 Consent Decree, *see* Dkt. # 1821, to which Rialto and other local government entities were signatories, half of the Wong payment will go to Goodrich, which previously agreed to perform the OU2/OU3 cleanup work, and half will go to EPA, to be deposited in the Special Account designated for the Site. *Mot.* 1:12–17. The United States asserts that entry of the Wong CD will “result in a complete remedy of groundwater contamination at the Site, fully funded and performed by settled potentially responsible parties [], and will conclude the Consolidated Federal Action.” *Mot.* 1:19–21.

## II. Legal Standard

The standard for approval of a CERCLA settlement is whether it is “reasonable, fair, and consistent with the purposes that CERCLA is intended to serve.” *United States v. Montrose Chem. Corp. of Cal.*, 50 F.3d 741, 747 (9th Cir. 1995) (quoting *United States v. Cannons Eng’g Corp.*, 899 F.2d 79, 85 (1st Cir. 1990)). The inquiry into whether an EPA consent decree is fair, reasonable, and consistent with the purposes of the statute is deferential and is based on the particular issues presented by each site and settlement. *See Securities & Exch. Comm’n v. Randolph*, 736 F.2d 525, 529 (9th Cir. 1984) (“[T]he courts should pay deference to the judgment of the government agency which has negotiated and submitted the proposed judgment.”); *Cannons*, 899 F.2d at 85–86 (“Congress intended, first, that the judiciary take a broad view of proposed settlements . . . and second, that the district courts treat each case on its own merits, recognizing the wide range of potential problems and possible solutions.”); *United States v. Pacific Gas & Elec.*, 776 F. Supp. 2d 1007, 1024 (N.D. Cal. 2011) (“The Court’s review of the proposed consent decree is informed by the public policy favoring settlement.”).

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<sup>1</sup> Wong, who had purchased 62 of the Site’s 160 acres in 1988, leased portions of his property to fireworks companies that contributed to the contamination. *Mot.* 5:22–25. Although the United States does not allege that Wong actively contributed to the contamination, he is still liable under CERCLA. *Id.* 6:7–9; *see also* 42 U.S.C. § 9607(a)(1).

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Because a consent decree “is not a decision on the merits or the achievement of the optimal outcome for all parties, but is the product of negotiation and compromise,” *United States v. Oregon*, 913 F.2d 576, 580 (9th Cir. 1990), a court should not inquire “whether the settlement is one which the court itself might have fashioned, or considers as ideal,” *Cannons*, 899 F.2d at 84, or seek to determine whether the proposed settlement provides for “every benefit that might someday be obtained in contested litigation.” *United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826, 850 (5th Cir. 1975). In evaluating a settlement, the court need not inquire into the individual shares of each settling defendant but may assess the fairness of the settlement as a whole. *See United States v. Charles George Trucking, Inc.*, 34 F.3d 1081, 1086 (1st Cir. 1994). The court should approve the settlement if it determines that the settlement is fair and reasonable, and resolves the controversy in a manner consistent with the public interest. *See Citizens for a Better Env’t v. Gorsuch*, 718 F.2d 1117, 1126 (D.C. Cir. 1983); *see also Oregon*, 913 F.2d at 581 (“The court need only be satisfied that the decree represents a reasonable factual and legal determination.”) (internal quotation marks omitted).

III. Discussion

A. Fairness, Reasonableness, and Consistency with CERCLA

Ultimately, the Court concludes that the Wong CD is fair, reasonable, and consistent with the statutory purposes underlying it.

In terms of fairness, the Court must assess both procedural and substantive fairness. *See Montrose*, 50 F.3d at 746. Procedurally, this litigation has been ongoing for thirteen years and has been vigorously contested by an array of participants. Goodrich and EPA, the two parties with a material interest in the Wong settlement, were active participants in the settlement negotiation, and the other settled parties previously waived any rights they could otherwise assert to the Wong funds. *See Mot.* 15:15–18. The Court sees nothing to suggest that the negotiation process was not “fair and full of adversarial vigor,” *United States v. Chevron U.S.A, Inc.*, 380 F. Supp. 2d 1104, 1111 (N.D. Cal. 2005), and when, like here, a settlement “was the product of good faith, arms-length negotiations, a negotiated decree is presumptively valid.” *Oregon*, 913 F.2d at 581.

Substantively, the \$5.9 million Wong payment will be used to further remedial work already laid out in previous consent decrees, and will be supplemented by “significant non-monetary consideration that Wong is providing, including the access and institutional control restrictions that may be placed on the Wong property.” *Mot.* 17:15–17. The money will be distributed in accordance with the terms laid out in the previous consent decrees, *see id.* 17:24–18:17, and the \$5.9 million figure is greater than that levied against similar land owners at

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the Site. *See id.* 18:20–19:18; *see also* Dkt. # 1822. When considered in the context of this ongoing litigation, and the previous settlements that have been reached, the Court concludes that the Wong CD adequately protects the public interest. *See United States v. Akzo Coatings of Am., Inc.*, 949 F.2d 1409, 1435 (6th Cir. 1991) (“Protection of the public interest is the key consideration in assessing whether a decree is fair, reasonable and adequate.”).

At a site where work is being completed, reasonableness of the overall settlement structure is satisfied if the remedy put forth is technically adequate to meet remedial goals. *See Cannons*, 899 F.2d at 89–90. Because “[t]here has never been any public comment submitted, during this or the prior five Consent Decree comment periods, claiming that the proposed cleanup remedy for the Site is technically inadequate,” *Mot.* 19:25–20:2, the Court concludes that the Wong CD is reasonable.

Finally, there is the question of whether the Wong CD is consistent with the purposes of CERCLA. The statute enumerates the objectives to be considered: securing environmental cleanup, encouraging participants to perform cleanup at their own expense, and encouraging settlement. *See* 42 U.S.C. § 9622(a); *see also Cannons*, 899 F.2d at 85. The United States notes that the Wong CD, taken together with the previously entered consent decrees, “accomplish[es] Site cleanup at [participant] expense, provide[s] for the payment of EPA oversight costs, and avoid[s] contested litigation with the Wong Estate.” *Mot.* 20:10–12. The Court therefore concludes that CERCLA’s objectives are satisfied by the Wong CD.

B. Rialto’s Opposition

The only opposition to the Wong CD was filed by Rialto. *See generally Opp.* Rialto argues that it “fails to meet the standards of fairness and reasonableness required by the law for entry by this Court.” *Id.* 1:3–4. The Court will consider Rialto’s various objections to the settlement.

In arguing that the Wong CD is procedurally and substantively unfair, *see id.* 15:1–19:9, Rialto’s primary contention is that it and the Court lack sufficient information to make a determination. The Court disagrees. As the United States notes in its reply,

[a] great deal of public information was provided by the United States, including: 1) the parties reaching a tentative settlement agreement and the settlement approval processes; 2) Probate Court complications and that the Wong CD was being presented for approval in Probate Court; 3) settlement funds being placed in the Court Registry; 4) obstacles delaying finalizing the Wong CD; 5) public comment

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solicited in the Federal Register, and a public meeting was held in Rialto in October, 2017; and 6) filings and appearances in this Court.

*Reply* 5:21–6:2 (citing Dkts. # 1948–49, 1957, 1962–64, 1990, 1995–2001, 2009, 2015, 2021). Previous consent decrees to which Rialto was a party laid out the structure of future settlement payments. Furthermore, the five “notable omissions from the Wong CD” that Rialto articulated in its public comment submitted on August 28, 2017, *see Opp.* 9:8–28, have now been addressed by the United States. *See Reply* 3:11–5:6. Having reviewed these responses, the Court is satisfied that the United States has produced sufficient information to analyze the fairness and reasonableness of the Wong CD, and does not change its conclusions articulated above. The Court agrees with the United States that “this is a publicly available settlement that benefits the public and the environment.” *Id.* 11:6–7.

Rialto disputes the United States’ contention that it waived its rights against Wong in the previous consent decrees. *See Opp.* 21:21–23:17. However, a review of these consent decrees demonstrates otherwise. In 2012, Rialto signed two consent decrees that resulted in payments totaling \$4.7 million. *See* Dkt. # 1791, ¶ 5; Dkt. # 1820, ¶ 70(a)(1)(c). The second consent decree included a section titled “Claims Against Other Parties in the Consolidated Federal Action,” which included the following language: “Settling Defendants, Settling Federal Agencies, *Rialto*, and Colton agree not to assert any claims and to waive all claims or causes of action . . . against each other or *any other person who is or was a party in the Consolidated Federal Action.*” Dkt. # 1820, ¶ 125 (emphasis added). In that same consent decree, Rialto also “agree[d] that in the event that . . . the United States, on behalf of EPA, reaches or has reached settlement with any other party to the Consolidated Federal Action who is not a signatory to this Consent Decree,” then it would provide releases “without further monetary consideration.” *Id.* ¶ 120. Accordingly, the Court agrees with the United States that Rialto has waived any potential claims against Wong.<sup>2</sup> As for the distribution of the settlement amount, that too is dictated by prior consent decrees. *See* Dkt. # 1821, ¶ 56 (specifying that Goodrich would receive 50 percent of settlement funds from any future settling party). On two other occasions, when settlement funds were accordingly distributed to Goodrich and EPA, *see* Dkts. # 1822, 1869, Rialto did not object.

<sup>2</sup> Rialto argues that the United States’ “strained contention that when it signed the Emhart CD Rialto agreed to waive its rights to recovery against someone that had never appeared, never participated in discovery, and never been discussed, is absurd.” *Opp.* 22:11–14. However, even ignoring the plain language of the consent decree’s waiver, the United States points out that Rialto would have had knowledge of Wong by the time it signed the release in 2012, since Wong was implicated in the Consolidated Federal Action as early as 2010. *See Reply* 8:22–9:2.

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Finally, Rialto argues that, “[a]t a minimum, discovery into the Wong CD is necessary so that the Court has sufficient facts to determine if it is fair, reasonable, and consistent with CERCLA.” *Opp.* 23:19–21. As discussed above, the Court feels that the extensive record in this case, including the various consent decrees already issued of which the Wong CD is merely the final installment, provides sufficient information to judge the fairness and reasonableness of the settlement, and, as Goodrich notes in its joinder, “[i]n contrast to its cited cases, Rialto fails to identify any particular matter that requires discovery.” *Goodrich Reply* 1:17–18. Furthermore, allowing discovery in this matter would contravene the Court’s prior orders maintaining the confidentiality of the mediation proceedings. *See* Dkt. # 1893, at 5 (“The American tradition heavily favors confidentiality in settlement negotiations, including the mediation efforts that occurred in this case.”); Dkt. # 1923, at 4 (“The Court confirms that continuing communications in connection with the mediation shall not be the subject of discovery.”).

IV. Conclusion

For the foregoing reasons, the Court **GRANTS** the United States’ motion to enter the Estate of Wong Consent Decree.

**IT IS SO ORDERED.**